Justice Easing Stance on Whistleblowers, Leaks

By Charles R. Babcock
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The Justice Department has issued new policy guidelines designed to mute criticism that it might prosecute whistleblowers or reporters for telling the public about government actions.

Philip B. Heymann, assistant attorney general in charge of the Criminal Division, sent a directive to U.S. attorneys Wednesday saying he had determined that it is "inappropriate" to prosecute persons under the "theft of government information" statues when the information is intended to be made public and hasn't been stolen.

Heymann said yesterday that his action was prompted by press criticism of espionage indictments that included such charges.

A "theft of government information" count was included in the recent spy indictment against accused Vietnamese agent David Truong and Ronald Humphrey, a U.S. Information Agency official. They were convicted earlier this year.

Heymann said the new directive would not have affected the Truong-Humphrey case because they were accused of passing information to a foreign government, not the public.

"But there was criticism at the time we were moving toward some kind of official secrets act," Heymann said.

"We didn't want anyone to have that impression."

He said he could recall no recent cases where such prosecutions have been directed at so-called whistleblowers—government employee who leak embarrassing information—or reporters who accept their information.

"The Ellsburg case may come closest to what we are talking about," Heymann said.

Daniel Ellsberg is the former government official who was charged with espionage several years ago for releasing the Pentagon Papers to the press. The documents described U.S. involvement in the Vietnam war.

John Shattuck, in the American Civil Liberties Union office in Washington, said yesterday that the action by Justice "is a substantial sign that the government realized it was moving in the direction of an official secrets act. Were glad it has pulled back from that position."